

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

HOUSTON GRANITE AND MARBLE  
CENTER, LLC

*Plaintiff*

V.

MESA UNDERWRITERS SPECIALTY  
INSURANCE COMPANY

*Defendant*

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CIVIL ACTION NO. 4:16-CV-00173

**PLAINTIFF'S FIRST AMENDED MOTION TO NON-SUIT WITHOUT PREJUDICE**

HOUSTON GRANITE AND MARBLE CENTER, LLC., Plaintiff moves this honorable court to non-suit the above reference cause without prejudice for good cause pursuant to FRCP 41(a)(2).

1. HOUSTON GRANITE AND MARBLE CENTER, LLC., Plaintiff sued MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY, Defendant in state court for a claim for property damage to their business property.

2. Defendant MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY removed this case to the United States District Court for the Southern District of Texas.

3. JOHN SYKOUDIS, President and CEO of HOUSTON GRANITE AND MARBLE CENTER, LLC., is undergoing triple by-pass heart surgery on June 9, 2016 and he has been unable to respond to discovery deadlines, provide assistance to Counsel for Plaintiff, and prosecute this case. JOHN SYKOUDIS is a material witness in this case and it cannot be prosecuted without his assistance and cooperation. A true copy of the Affidavit of JOHN

SYKOUDIS is attached hereto as Exhibit "A" and incorporated herein by reference the same as if copied verbatim and fully set forth at length."

4. Further, HOUSTON GRANITE AND MARBLE CETER, LLC., Plaintiff reasonably believes that the parties may be able to resolve this case without the need for litigation.

5. Defendant has not filed counterclaim or a motion for summary judgment and will not be prejudiced.

5. In view of the foregoing, HOUSTON GRANITE AND MARBLE CENTER, LLC, Plaintiff shows there is good cause to grant this Motion to Dismiss Without Prejudice to refile this case.

Respectfully submitted,

**HAVINS LAW FIRM, LP**

S/ David P. Havins

Attorney for Plaintiffs

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**CERTIFICATE OF CONFERENCE**

I hereby certify that on June 8, 2016, I had a conversation with Aaron G. Stendell, Counsel for Defendant and they are opposed to this Motion to Non-Suit Without Prejudice.

S/ David P. Havins

David P. Havins

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded to Counsel for Defendants in accordance with the Federal Rules of Civil Procedure on this 8<sup>th</sup> day of June, 2016.

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Aaron G. Stendell  
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S/ David P. Havins

David P. Havins